

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTURO A. CANTU,) CASE NO. C07-0641-RSL
Petitioner,)
v.) REPORT AND RECOMMENDATION
ROBERT J. PALMQUIST, Warden,)
Federal Detention Center, et al.,)
Respondents.)

Petitioner is a federal prisoner who is currently incarcerated at the Federal Detention Center at SeaTac, Washington. He is serving a twenty-four month sentence pursuant to a judgment and sentence of the United States District Court for the Eastern District of Washington. (See Dkt. No. 15, Ex. 5.) Petitioner has filed a federal habeas petition pursuant to 28 U.S.C. § 2241 in which he challenges the validity of the regulation issued by the Federal Bureau of Prisons (“BOP”) which categorically limits the class of prisoners eligible for release to community confinement based on the amount of time the prisoner has left to serve. (Dkt. No. 3.)

In *Pankratz v. Palmquist*, Case No. C06-1328-RSL, the District Court found that the regulation challenged in these proceedings, 28 C.F.R. § 570.21 (“the regulation”), which limits the

01 amount of time an inmate may spend in community confinement to 10% of the inmate's sentence,
02 was invalid because it exceeded the authority granted to the BOP under 18 U.S.C. § 3621(b).

03 Respondents have filed a response to the petition in which they set forth essentially the
04 same legal arguments advanced in *Pankratz*. (See Dkt. No. 15.) However, respondents also
05 assert in their response that the BOP has already assessed petitioner's eligibility for transfer to
06 community confinement based upon the factors outlined in 18 U.S.C. § 3621, without regard to
07 the ten percent regulation. Respondents reference a Declaration of John McCafferty which
08 apparently supports this assertion. Unfortunately, the Declaration of John McCafferty does not
09 appear in the record before this Court. Nonetheless, documentation submitted by petitioner in
10 conjunction with his reply brief indicates that the BOP did, in fact, conduct a review of petitioner's
11 request for additional time in community custody without regard to any time limitation. (Dkt. No.
12 17-2 at 6.)

13 The legal issues in this case are indistinguishable from those presented in *Pankratz*.
14 However, it appears that petitioner has already received the relief to which he would be entitled
15 if he were to prevail in this habeas action. Accordingly, this Court recommends that petitioner's
16 federal habeas petition be denied. A proposed order accompanies this Report and
17 Recommendation.

18 DATED this 16th day of July, 2007.

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20 
21 Mary Alice Theiler
22 United States Magistrate Judge